

PUBLIC CHAPTER NO. 1164

HOUSE BILL NO. 4197

**By Representatives Fincher, Odom, Maggart, Lynn, Hardaway,
Overbey, Harry Brooks, Coleman, Hackworth, Sontany, Lundberg,
DuBois, Campfield**

Substituted for: Senate Bill No. 4199

**By Senators Kyle, Marrero, Jackson, Black, Burchett, Woodson,
Herron, Ford, Burks, Raymond Finney**

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 39, Part 2, relative to sexual offenders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-39-201, is amended by deleting subsection (7) in its entirety and substituting instead the following:

(7) The offender is subject to specified terms and conditions which are implemented at sentencing, or, at the time of release from incarceration, which require that those who are financially able must pay specified administrative costs to the appropriate registering agency, who shall retain one hundred dollars (\$100) of these costs, for the administration of this part and shall be reserved for the purposes authorized by this part at the end of each fiscal year with the remaining fifty dollars (\$50.00) of fees to be remitted to the Tennessee Bureau of Investigation's Sex Offender Registry; and

SECTION 2. Tennessee Code Annotated, Section 40-39-202, is amended by deleting the section in its entirety and substituting instead the following:

As used in this part, unless the context otherwise requires:

(1) "Board" means the Tennessee board of probation and parole;

(2) "Conviction" means a judgment entered by a Tennessee court upon a plea of guilty, a plea of nolo contendere, a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from such judgment. A "conviction" includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a

conviction, whether upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, in any other state of the United States, other jurisdiction, or other country. A conviction, whether upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, for an offense committed in another jurisdiction that would be classified as a sexual offense under subdivision (20) or a violent sexual offense under subdivision (28), if committed in this state, shall be considered a conviction for the purposes of this part. Convictions, for the purposes of this part, also include a plea taken in conjunction with § 40-35-313, or its equivalent in any other jurisdiction.

(3) "Designated law enforcement agency" means any law enforcement agency that has jurisdiction over the primary or secondary residence, place of physical presence, place of employment, school, or institution of higher education, where the student is enrolled or, for offenders on supervised probation or parole, the board or court ordered probation officer;

(4) "Employed or practices a vocation" means any full-time or part-time employment in the state, with or without compensation, or employment which involves counseling, coaching, teaching, supervising, volunteering or working with minors in any way regardless of the period of employment, whether such employment is financially compensated, volunteered or performed for the purpose of any government or education benefit;

(5) "Institution of higher education" means a public or private:

(A) Community college;

(B) College;

(C) University; or

(D) Independent postsecondary institution.

(6) "Law Enforcement agency of any institution of higher education" means any campus law enforcement arrangement authorized by § 49-7-118;

(7) "Local law enforcement agency" means:

(A) Within the territory of a municipality, the municipal police department;

(B) Within the territory of a county having a metropolitan form of government, the metropolitan police department; or

(C) Within the unincorporated territory of a county, the sheriff's office.

(8) "Minor" means any person under eighteen (18) years of age;

(9) "Month" means a calendar month;

(10) "Offender" means both "sexual offender" and "violent sexual offender", unless otherwise designated. An offender who qualifies both as a sexual offender and a violent sexual offender shall be considered a violent sexual offender;

(11) "Parent" means any biological parent, adoptive parent, or step-parent, and includes any legal or court-appointed guardian or custodian; however, "parent" shall not include step-parent if the offender's victim was a minor less than thirteen (13) years of age;

(12) "Primary residence" means a place where the person abides, lodges, resides, or establishes any other living accommodations in this state for five (5) consecutive days.

(13) "Register" means the initial registration of a sexual or violent sexual offender, or the re-registration of a sexual offender or violent sexual offender after deletion or termination from the SOR.

(14) "Registering agency" means a sheriff's office, municipal police department, metropolitan police department, campus law enforcement agency, the Tennessee department of correction, a private contractor with the Tennessee department of correction, or the board;

(15) "Relevant information deemed necessary to protect the public" means that information set forth in § 40-39-206(e)(1)-(13);

(16) "Report" means appearance before the proper designated law enforcement agency for any of the purposes set out in this part;

(17) "Resident" means any person who abides, lodges, resides, or establishes any other living accommodations in this state, including establishing a physical presence in this state;

(18) "Secondary residence" means a place where the person abides, lodges, or resides, or establishes any other living accommodations in this state for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's primary residence; for a person whose primary residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for a period of fourteen (14) or more days in the aggregate during any calendar year; or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's primary residence, including any out-of-state address;

(19) "Sexual offender" means a person who has been convicted in this state of committing a sexual offense as defined in subdivision (20); or has another qualifying conviction as defined in subdivision (2);

(20) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constitutes the criminal offense of:

(i) Sexual battery, under § 39-13-505;

(ii) Statutory rape, under § 39-13-506, if the defendant has one (1) or more prior convictions for mitigated statutory rape under § 39-13-506(a), statutory rape under § 39-13-506(b), or aggravated statutory rape under § 39-13-506(c);

(iii) Aggravated prostitution, under § 39-13-516;

(iv) Sexual exploitation of a minor, under § 39-17-1003;

(v) [Deleted by 2007 amendment.]

(vi) False imprisonment where the victim is a minor, under § 39-13-302, except when committed by a parent of the minor;

(vii) Kidnapping, under § 39-13-303, except when committed by a parent of the minor;

(viii) Indecent exposure, under § 39-13-511, upon a third or subsequent conviction;

(ix) Solicitation of a minor, under § 39-13-528 when the offense is classified as a Class D felony, Class E felony, or a misdemeanor;

(x) Spousal sexual battery, for those committing the offense prior to June 18, 2005, under former § 39-13-507;

(xi) Attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (20)(A);

(xii) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (20)(A);

(xiii) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (20)(A);

(xiv) Criminal responsibility, under § 39-11-402 (2), to commit any of the offenses enumerated in this subdivision (20)(A);

(xv) Facilitating the commission, under § 39-11-403, to commit any of the offenses enumerated in this subdivision (20)(A);

(xvi) Being an accessory after the fact, under § 39-11-411, to commit any of the offenses enumerated in this subdivision (20)(A);

(xvii) Aggravated statutory rape, under § 39-13-506(c); or

(xviii) Exploitation of a minor by electronic means, under § 39-13-529;

(B) The commission of any act, that prior to November 1, 1989, constituted the criminal offense of:

(i) Sexual battery, under § 39-2-607 [repealed];

(ii) Statutory rape, under § 39-2-605 [repealed], only if the facts of the conviction satisfy the definition of aggravated statutory rape;

(iii) Assault with intent to commit rape or attempt to commit sexual battery, under § 39-2-608 [repealed];

(iv) Incest, under § 39-4-306 [repealed];

(v) Use of a minor for obscene purposes, under § 39-6-1137 [repealed];

(vi) Promotion of performance including sexual conduct by a minor, under § 39-6-1138 [repealed];

(vii) Criminal sexual conduct in the first degree, under § 39-3703 [repealed];

(viii) Criminal sexual conduct in the second degree, under § 39-3704 [repealed];

(ix) Criminal sexual conduct in the third degree, under § 39-3705 [repealed];

(x) Kidnapping where the victim is a minor, under § 39-2-303 [repealed], except when committed by a parent of the minor;

(xi) Solicitation, under § 39-1-401, [repealed] or 39-118(b) [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xii) Attempt, under § 39-1-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xiii) Conspiracy, under § 39-1-601 [repealed] or § 39-1104 [repealed], to commit any of the offenses enumerated in this subdivision (20)(B);

(xiv) Accessory before or after the fact, or aider and abettor, under title 39, chapter 1, part 3 [repealed], to any of the offenses enumerated in this subdivision (20)(B);

(21) "SOR" means the TBI's centralized record system of offender registration, verification, and tracking information;

(22) "Student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher learning;

(23) "TBI" means the Tennessee bureau of investigation;

(24) "TBI registration form" means the Tennessee sexual offender registration, verification and tracking form;

(25) "TDOC" means the Tennessee department of correction;

(26) "TIES" means the Tennessee information enforcement system;

(27) "Violent sexual offender" means a person who has been convicted in this state of committing a "violent sexual offense", as defined in subdivision (28), or has another qualifying conviction, as defined in subdivision (2);

(28) "Violent sexual offense" means the commission of any act that constitutes the criminal offense of:

(A) Aggravated rape, under § 39-2-603 [repealed] or § 39-13-502;

(B) Rape, under § 39-2-604; [repealed] or § 39-13-503;

(C) Aggravated sexual battery, under § 39-2-606; [repealed] or § 39-13-504;

(D) Rape of a child, under § 39-13-522;

(E) Attempt to commit rape, under § 39-2-608; [repealed];

(F) Aggravated sexual exploitation of a minor, under § 39-17-1004;

(G) Especially aggravated sexual exploitation of a minor under § 39-17-1005;

(H) Aggravated kidnapping where the victim is a minor, under § 39-13-304, except when committed by a parent of the minor;

(I) Especially aggravated kidnapping where the victim is a minor, under § 39-13-305, except when committed by a parent of the minor;

(J) Sexual battery by an authority figure, under § 39-13-527;

(K) Solicitation of a minor, under § 39-13-528 when the offense is classified as a Class B or Class C felony;

(L) Spousal rape, under § 39-13-507(b)(1) [repealed];

(M) Aggravated spousal rape, under § 39-13-507 (c)(1); [repealed];

(N) Criminal exposure to HIV, under § 39-13-109(a)(1);

(O) Statutory rape by an authority figure, under § 39-13-532;

(P) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (28);

(Q) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (28);

(R) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (28);

(S) Criminal responsibility, under § 39-11-402 (2), to commit any of the offenses enumerated in this subdivision (28);

(T) Facilitating the commission, under § 39-11-403, to commit any of the offenses enumerated in this subdivision (28);

(U) Being an accessory after the fact, under § 39-11-411, to commit any of the offenses enumerated in this subdivision (28);

(V) Incest, under § 39-15-302; or

(W) Aggravated rape of a child under § 39-13-531;
and

(29) "Within forty-eight (48) hours" means a continuous forty-eight hour period, not including Saturdays, Sundays, or federal or state holidays.

SECTION 3. Tennessee Code Annotated, Section 40-39-203, is amended by deleting the section in its entirety and substituting instead the following:

§ 40-39-203

(a)

(1) Within forty-eight (48) hours of establishing or changing a primary or secondary residence, establishing a physical presence at a particular location, or becoming employed or practicing a vocation or becoming a student in this state, the offender shall register or report in person, as required by the provisions of this part. Likewise, within forty-eight (48) hours of release on probation or any alternative to incarceration, excluding parole, the offender shall register or report in person, as required by the provisions of this part.

(2) Regardless of an offender's date of conviction or discharge from supervision, an offender whose contact with this state is sufficient to satisfy the requirements of subdivision (a)(1) and who was an adult when the offense occurred is required to register or report in person as required by this part, if the person was required to register as any form of sexual offender in another jurisdiction prior to the offender's presence in this state.

(3) An offender who resides and is registered in this state and who intends to move out of this state shall, within forty-eight (48) hours after moving to another state or within forty-eight (48) hours of becoming reasonably certain of the intention to move to another state, register or report to the offender's designated law enforcement agency the address at which the offender will reside in the new jurisdiction.

(4) Within forty-eight (48) hours of a change in any other information given to the registering agency by the offender which is contained on the registration form, the offender must report said change to the registering agency.

(5) Within forty-eight (48) hours of being released from probation or parole, an offender must report to the proper law enforcement agency which shall then become the registering agency and take over registry duties from the board.

(6) Within forty-eight (48) hours of a material change in employment or vocation status, the offender shall report the change to the person's registering agency. For purposes of this subdivision (a)(6), "a material change in employment or vocational status" includes being terminated involuntarily from the offender's employment or vocation, voluntarily terminating the employment or vocation, taking different employment or the same

employment at a different location, changing shifts or substantially changing the offender's hours of work at the same employment or vocation, taking additional employment, reducing the offender's employment, or any other change in the offender's employment or vocation that differs from that which the offender originally registered. For a change in employment or vocational status to be considered a material one, it must remain in effect for five (5) consecutive days or more.

(7) Within three (3) days, excluding holidays, of an offender changing his or her electronic mail address information, any instant message, chat or other Internet communication name or identity information that the person uses or intends to use, whether within or without the state of Tennessee, the offender shall report the change to the offender's designated law enforcement agency.

(b)

(1) An offender who is incarcerated in this state in a local, state, or federal jail, or a private penal institution shall, within forty-eight (48) hours prior to the offender's release, register or report in person, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3), as follows:

(A) If incarcerated in a state, federal, or private penal facility, with the warden or the warden's designee; or

(B) If incarcerated in a local jail, with the sheriff or the sheriff's designee.

(2) After registering or reporting with the incarcerating facility as provided in subdivision (b)(1), an offender who is incarcerated in this state in a local, state, or federal jail, or a private penal institution shall, within forty-eight (48) hours after the offender's release from the incarcerating institution, report in person to the offender's registering agency, unless the place of incarceration is also the person's registering agency.

(c) An offender from another state, jurisdiction, or country, who has established a primary or secondary residence within this state, or has established a physical presence at a particular location, shall within forty-eight (48) hours of establishing residency or a physical presence, register or report in person with the designated law enforcement agency, completing and signing a

TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3).

(d)

(1) An offender from another state, jurisdiction, or country, who is not a resident of this state, shall, within forty-eight (48) hours of employment, commencing practice of a vocation or becoming a student in this state, register or report in person, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3), with:

(A) The sheriff in the county or the chief of police in the municipality within this state where the offender is employed or practices a vocation; or

(B) The law enforcement agency or any institution of higher education, or if not applicable, the designated law enforcement agency with jurisdiction over the campus, if the offender is employed or practices a vocation or is a student.

(2) Within forty-eight (48) hours of an offender from another state, jurisdiction, or country, who is not a resident of this state, making a material change in the offender's vocational or employment or vocational status within this state, the offender shall report the change to the person's registering agency. For purposes of this subdivision (d)(2), "a material change in employment or vocational status" includes being terminated involuntarily from the offender's employment or vocation, voluntarily terminating the employment or vocation, taking different employment or the same employment at a different location, changing shifts or substantially changing the offender's hours of work at the same employment or vocation, taking additional employment, reducing the offender's employment, or any other change in the offender's employment or vocation that differs from that which the offender originally registered. For a change in employment or vocational status to be considered a material one, it must remain in effect for five (5) consecutive days or more.

(e) An offender from another state, jurisdiction, or country, who becomes a resident of this state, pursuant to the interstate compact provisions of title 40, chapter 28, part 4, shall, within forty-eight (48) hours of entering the state, register or report in person with the board, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3), in addition to the requirements of title 40, chapter 28, part 4, and the specialized conditions for sex offenders from the board.

(f) Offenders who do not maintain either a primary or secondary residence, as defined in this part, shall be considered homeless, and are subject to the registration requirements of this part. Offenders who do not maintain either a primary or secondary residence shall be required to report to their registering agency monthly for so long as they do not maintain either a primary or secondary residence.

(g) Offenders who were previously required to register or report under title 40, chapter 39, part 1 [repealed], shall register or report in person with the designated law enforcement agency by August 31, 2005. Offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, are exempt from this requirement, as otherwise provided by this part.

(h) An offender who indicates to a designated law enforcement agency on the TBI registration form the offender's intent to reside in another state, jurisdiction, or country, and who then decides to remain in this state, shall, within forty-eight (48) hours of the decision to remain in the state, report in person to the designated law enforcement agency and update all information pursuant to subsection (i).

(i) TBI registration forms shall require the registrant's signature and disclosure of the following information, under the penalty of perjury, pursuant to § 39-16-702(b)(3):

(1) Complete name and all aliases, including but not limited to, any names that the offender may have had or currently has by reason of marriage or otherwise;

(2) Date and place of birth;

(3) Social security number;

(4) A photocopy of a valid driver's license, or if no valid driver license has been issued to the offender, a photocopy of any state or federal government issued identification card;

(5) For an offender on supervised release, the name, address, and telephone number of the registrant's probation or parole officer, or other person responsible for the registrant's supervision;

(6) Sexual offenses or violent sexual offenses for which the registrant has been convicted, the date of such offenses, and the county and state of each conviction;

(7) Name of any current employers and length of employment, including physical addresses and phone numbers;

(8) Current physical address and length of residence at that address, which shall include any primary or secondary residences. For the purpose of this section, a post office box number shall not be considered an address;

(9) Mailing address, if different from physical address;

(10) Any vehicle, mobile home, trailer, or manufactured home, used or owned by an offender, including descriptions, vehicle information numbers, and license tag numbers;

(11) Any vessel, live-aboard vessel, or houseboat used by an offender, including the name of the vessel, description, and all identifying numbers;

(12) Name and address of each institution of higher education in this state where the offender is employed or practices a vocation, or is a student;

(13) Race and gender;

(14) Name, address, and phone number of offender's closest living relative;

(15) Whether victims of the offender's convictions are minors or adults, the number of victims, and the correct age of the victim or victims and of the offender at the time of the offense or offenses, if the ages are known;

(16) Verification by TBI or the offender that that TBI has received the offender's DNA sample;

(17) A complete listing of the offender's electronic mail address information or any instant message, chat or other Internet communication name or identity that the person uses or intends to use;

(18) Whether any minors reside in the primary or secondary residence; and

(19)

(A) Any other registration, verification, and tracking information, including fingerprints and a current photograph of the offender, vehicles and vessels, as referred to in subdivisions (i)(10) and (i)(11), as may be required by rules promulgated by the TBI, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(B) By January 1, 2007, the TBI shall promulgate and disseminate to all applicable law enforcement agencies, correctional institutions and any other agency that may be called upon to register an offender, rules establishing standardized specifications for the photograph of the offender required by this subdivision (i)(20)(A). The rules shall specify that the photograph or digital image submitted for each offender must conform to the following compositional specifications or the entry will not be accepted for use on the registry and the agency will be required to resubmit the photograph:

(i) Head Position:

(a) The person being photographed must directly face the camera;

(b) The head of the person should not be tilted up, down, or to the side; and

(c) The head of the person should cover about fifty percent (50%) of the area of the photo.

(ii) Background:

(a) The person being photographed should be in front of a neutral, light-colored background; and

(b) Dark or patterned backgrounds are not acceptable;

(iii) The photograph must be in focus;

(iv) Photos in which the person being photographed is wearing sunglasses or other items that detract from the face are not permitted;

(v) Head Coverings and Hats:

(a) Photographs of applicants wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant; and

(b) Photos of applicants with tribal or other headgear not specifically religious in nature are not permitted.

(j)

(1) Notwithstanding the registration deadlines otherwise established by this section, any person convicted of a sexual offense or violent sexual offense in this state or who has another qualifying conviction as defined in § 40-39-202(2), but who is not required to register for the reasons set out in subdivision (j)(2), shall have until August 1, 2007, to register as a sexual offender or violent sexual offender in this state.

(2) Subdivision (j)(1) shall apply to offenders:

(A) Whose convictions for a sexual offense or violent sexual offense occurred prior to January 1, 1995;

(B) Who were not on probation, parole, or any other alternative to incarceration for a sexual offense or prior sexual offense on or after January 1, 1995; or

(C) Who were discharged from probation, parole, or any other alternative to incarceration for a sexual offense or violent sexual offense prior to January 1, 1995; or

(D) Who were discharged from incarceration without supervision for a sexual offense or violent sexual offense prior to January 1, 1995.

(k) No later than the third day after an offender's initial registration, the registration agency shall send by the United States postal service the original signed TBI registration form containing information required by subsection (i) to TBI headquarters in Nashville.

(l) The offender's signature on the TBI registration form creates the presumption that the offender has knowledge of the registration, verification, and tracking requirements of this part.

(m) Registry information regarding all registered offender's electronic mail address information, any instant message, chat or other Internet communication name or identity information may be electronically transmitted by the TBI to a business or organization that offers electronic communication or remote computing services for the purpose of prescreening users or for comparison with information held by the requesting business or organization. In order to obtain the information from the TBI, the requesting business or organization that offers electronic communication or remote computing services shall agree to notify the TBI forthwith when a comparison indicates that any such registered sex offender's electronic mail address information, any instant message, chat or other Internet communication name or identity information is being used on their system. The requesting business or organization shall also agree that the information will not be further disseminated.

(n) If the offender's DNA sample has not already been collected pursuant to § 40-35-321 or any other provision of law and received by TBI, the offender's DNA sample shall be taken by the registering agency at the time the offender registers or at such offender's next scheduled registration or reporting and sent to TBI.

(o) An offender who registers or reports as required by this section prior to July 1, 2008, shall provide the additional information on the registration form required by this section at such offender's next scheduled registration or reporting date.

SECTION 4. Tennessee Code Annotated, Section 40-39-204, is amended by deleting subsections (b), (c) and (g) in their entirety and substituting instead the following:

(b) At least once during the months of March, June, September, and December of each calendar year, all violent sexual offenders shall report in person to the designated law enforcement agency to update the offender's fingerprints, palm prints and photograph, as determined necessary by the agency, and to verify the continued accuracy of the information in the TBI registration form. Offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, are exempt from the in-

person reporting and fingerprinting, as otherwise provided by this part. Once a year, the violent sexual offender shall pay the specified administrative costs, not to exceed one hundred fifty dollars (\$150), one hundred dollars (\$100) of which shall be retained by the designated law enforcement agency to be used for the purchase of equipment, to defray personnel and maintenance costs, and any other expenses incurred as a result of the implementation of this part. The remaining fifty dollars (\$50) shall be submitted by the registering agency to TBI for maintenance, upkeep, employment costs, as well as any other expenses incurred as a result of the implementation of this part. Offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, are exempt from paying the administrative cost, as otherwise provided by this part.

(c) Once a year, all sexual offenders shall report in person, no earlier than seven (7) calendar days before and no later than seven (7) calendar days after the offender's date of birth, to the designated law enforcement agency to update the offender's fingerprints, palm prints and photograph, as determined necessary by the agency, to verify the continued accuracy of the information in the TBI registration form, and to pay the specified administrative costs, not to exceed one hundred fifty dollars (\$150), one hundred dollars (\$100) of which shall be retained by the designated law enforcement agency to be used for the purchase of equipment, to defray personnel and maintenance costs, and any other expenses incurred as a result of the implementation of this part. The remaining fifty dollars (\$50) shall be submitted by the registering agency to TBI for maintenance, upkeep, employment costs, as well as any other expenses incurred as a result of the implementation of this part. Offenders who reside in nursing homes and assisted living facilities, and offenders committed to mental health institutions or continuously confined to home or health care facilities due to mental or physical disabilities, are exempt from the in-person reporting and fingerprinting and administrative cost, as otherwise provided by this part. However, if an offender is released or discharged from a nursing home, assisted living facility, mental health institution or is no longer continuously confined to home or a health care facility due to mental or physical disabilities, the offender shall, within forty-eight (48) hours, register in person with the designated law enforcement agency, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3). If the offender has previously registered prior to such release or discharge, the offender shall, within forty-eight (48) hours, report in person to the designated law enforcement agency and update all information pursuant to this section.

(g) Offenders who do not maintain either a primary or secondary residence, as defined in this part, shall be considered homeless, and are subject to the reporting requirements of this part. Such offenders, who are considered homeless, shall be required to report to their registering agency monthly. By the authority established in § 40-39-206(f), the TBI

shall develop tracking procedures for the continued verification and tracking of these offenders in the interest of public safety.

SECTION 5. Tennessee Code Annotated, Section 40-39-206(e)(1), is amended by deleting the subdivision in its entirety and substituting instead the following:

The offender's complete name, as well as any aliases, including but not limited to, any names that the offender may have had or currently has by reason of marriage or otherwise;

SECTION 6. Tennessee Code Annotated, Section 40-39-206, is amended by adding the following new subdivisions to subsection (e):

(11) The text of the provision of law(s) defining the criminal offense(s) for which the offender is registered;

(12) A physical description of the offender, including height, weight, color of eyes and hair, tattoos, scars and marks; and

(13) The criminal history of the offender, including the date of all arrests and convictions; the status of parole, probation, or supervised release; registration status; and the existence of any outstanding arrest warrants for the sex offender.

SECTION 7. Tennessee Code Annotated, Section 40-39-207, is amended by deleting the section in its entirety and substituting instead the following:

§ 40-39-207

(a)

(1) No sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration, or no sooner than ten (10) years after discharge from incarceration without supervision, an offender required to register under this part may file a request for termination of registration requirements with TBI headquarters in Nashville.

(2) Notwithstanding the provisions of subdivision (1), if a court of competent jurisdiction orders that an offender's records be expunged pursuant to § 40-32-101, and the offense being expunged is an offense eligible for expungement under § 40-32-101, the TBI shall immediately remove the offender from the SOR and the offender's records shall be removed as provided in § 40-39-209.

(b) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR, to determine whether the offender has complied with the provisions of this part. In addition, the TBI shall conduct fingerprint-based state and federal criminal history checks, to determine whether the offender has been convicted of any additional sexual offenses, as defined in § 40-39-202(20), or violent sexual offenses, as defined in § 40-39-202(28).

(c) If it is determined that the offender has not been convicted of any additional sexual offenses or violent sexual offenses during the ten-year period, and that the offender has substantially complied with the provisions of this part and former part 1 of this chapter, the TBI shall remove the offender's name from the SOR and notify the offender that the offender is no longer required to comply with the provisions of this part.

(d) If it is determined that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the ten-year period or has not substantially complied with the provisions of this part and former part 1 of this chapter, the TBI shall not remove the offender's name from the SOR and shall notify the offender that the offender has not been relieved of the provisions of this part.

(e) If an offender is denied a termination request based on substantial noncompliance, the offender may petition again for termination no sooner than five (5) years after the previous denial.

(f) Immediately upon the failure of a sexual offender to register or otherwise substantially comply with the requirements established by this part, the running of the offender's ten-year reporting period shall be tolled, notwithstanding the absence or presence of any warrant or indictment alleging a violation of this part.

(g) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if the county is in Tennessee, for review of the decision. The review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons the request was denied.

(1) An offender required to register under this part shall continue to comply with the registration, verification, and tracking requirements for the life of that offender, if that offender:

(A) Has one (1) or more prior convictions for a sexual offense, as defined in § 40-39-202(20), regardless of when such conviction or convictions occurred; or

(B) Has been convicted of a violent sexual offense, as defined in § 40-39-202(28).

(2) For purposes of subdivision (g)(1)(A),

(A) "Prior conviction" means that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of a sexual offense prior to or at the time of committing another sexual offense;

(B) "Prior conviction" includes convictions under the laws of any other state, government or country that, if committed in this state, would constitute a sexual offense. If an offense in a jurisdiction other than Tennessee is not identified as a sexual offense in this state, it shall be considered a prior conviction if the elements of the offense are the same as the elements for a sexual offense; and

(C) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-104(c)(3)-(9). A sexual offense shall be considered as having been committed after a separate period of incarceration or supervision if the sexual offense is committed while the person was:

(i) On probation, parole or community correction supervision for a sexual offense;

(ii) Incarcerated for a sexual offense;

(iii) Assigned to a program whereby the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release or medical furlough for a sexual offense; or

(iv) On escape status from any correctional institution when incarcerated for a sexual offense.

(h)

(1) Any offender required to register pursuant to this chapter because the offender was convicted of the offense of statutory rape under § 39-13-506, and the offense was committed prior to July 1, 2006, may file a request for termination of registration requirements with TBI headquarters in Nashville, if the offender would not be required to register if the offense was committed on or after July 1, 2006.

(2) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR, to determine whether the offender would not be required to register if the offender committed the same offense on or after July 1, 2006. In addition, the TBI shall conduct fingerprint-based state and federal criminal history checks, to determine whether the offender has been convicted of any additional sexual offenses, as defined in § 40-39-202, or violent sexual offenses, as defined in § 40-39-202.

(3) If it is determined that the offender would not be required to register if the offense was committed on or after July 1, 2006, that the offender has not been convicted of any additional sexual offenses or violent sexual offenses, and that the offender has substantially complied with the provisions of this part and any previous versions of this part, the TBI shall remove the offender's name from the SOR and notify the offender that the offender is no longer required to comply with the provisions of this part.

(4) If it is determined that the offender would still be required to register even if the statutory rape had been committed on or after July 1, 2006, or that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the period of registration or has not substantially complied with the provisions of this part and the previous versions of this part, the TBI shall not remove the offender's name from the SOR and shall notify the offender that the offender has not been relieved of the provisions of this part.

(5) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if

the county is in Tennessee, for review of the decision. The review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons the request was denied.

(i)

(1)

(A) If a person convicted of an offense was not required to register as an offender prior to August 1, 2007, because such person was convicted, discharged from parole or probation supervision, or discharged from incarceration without supervision prior to January 1, 1995, for an offense now classified as a sexual offense, such person may file a request for termination of registration requirements with TBI headquarters in Nashville, no sooner than five (5) years from August 1, 2007, or the date the person first registered with the SOR, whichever date is later.

(B) The procedure, criteria for removal and other requirements of this section shall otherwise apply to an offender subject to removal after five (5) years as specified in subdivision (i)(1)(A).

(2) If a person convicted of an offense was not required to register as an offender prior to August 1, 2007, because such person was convicted, discharged from parole or probation supervision, or discharged from incarceration without supervision prior to January 1, 1995, for an offense now classified as a violent sexual offense, such person shall continue to comply with the registration, verification, and tracking requirements for the life of that offender.

SECTION 8. Tennessee Code Annotated, Section 40-39-208, is amended by deleting subsection (a) and subdivision (1) in their entirety and substituting instead the following:

(a) It is an offense for an offender to knowingly violate any provision of title 40, chapter 39, part 2. Violations shall include, but not be limited to, the following:

(1) Failure of an offender to timely register or report;

SECTION 9. Tennessee Code Annotated, Section 40-39-209, is amended by deleting the section in its entirety and substituting instead the following:

§ 40-39-209.

Except as otherwise provided in § 40-39-207(a)-(d), no record shall be removed from the SOR, unless ordered by a court of competent jurisdiction as part of an expungement order pursuant to § 40-32-101, so long as the offense is eligible for expungement under § 40-32-101.

SECTION 10. Tennessee Code Annotated, Section 40-39-210, is amended by deleting the section in its entirety and substituting instead the following:

§40-39-210.

Upon receipt of notice of the death of a registered offender, verified through the registering agency or TBI officials by obtaining a copy of the offender's certificate of death, by checking the social security death index or by obtaining a copy of an accident report the TBI shall remove all data pertaining to the deceased offender from the SOR.

SECTION 11. Tennessee Code Annotated, Section 40-39-211, is amended by deleting the section in its entirety and substituting instead the following:

§ 40-39-211.

(a) While mandated to comply with the requirements of this chapter, no sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, whose victim was a minor, shall knowingly establish a primary or secondary residence or any other living accommodation, or knowingly obtain sexual offender treatment or attend a sexual offender treatment program, or knowingly accept employment, within one thousand feet (1,000') of the property line of any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public.

(b) No sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, shall knowingly:

(1) Reside within one thousand feet (1,000') of the property line on which the offender's former victims, or the victims' immediate family members, reside;

(2) Come within one hundred feet (100') of any of the offender's former victims, except as otherwise authorized by law;

(3) Contact any of the offender's former victims or such victims' immediate family members without the consent of the victim or consent of the victim's parent or guardian if such victim is a minor being contacted by telephone, in writing, or by electronic mail, Internet services, or by any other form of electronic communication, unless otherwise authorized by law.

(c) While mandated to comply with the requirements of this part, no sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, whose victim was a minor, shall knowingly reside with a minor. Notwithstanding this

subsection (c), such an offender may reside with a minor, if the offender is the parent of the minor, unless one (1) of the following conditions applies:

(1) The offender's parental rights have been or are in the process of being terminated as provided by law; or

(2) Any minor or adult child of the offender was a victim of a sexual offense or violent sexual offense committed by the offender.

(d) No sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, shall knowingly:

(1) Be upon or remain on the premises of any school building or school grounds in this state when the person has reason to believe children under the age of eighteen (18) are present.

(2) Stand, sit idly, whether or not the person is in a vehicle, or remain within five hundred feet (500') of a school building or on school grounds in this state when children under the age of eighteen (18) are present, while not having a reason or relationship involving custody of or responsibility for a student or any other specific or legitimate reason for being there.

(3) Be in any conveyance owned, leased or contracted by a school to transport students to or from school or a school-related activity when children under the age of eighteen (18) years are present in the conveyance.

(4) The provisions in subsections (d)(1)-(d)(3) of this section shall not apply when the offender:

(i) Is a student in attendance at the school;
or

(ii) Is attending an academic conference or other scheduled school event with school officials as a parent or legal guardian of a child who is enrolled in the school and is participating in the conference or event; or

(iii) Resides at a state licensed or certified facility for incarceration, health or convalescent care; or

(iv) Is dropping off or picking up a child or children and the person is the child or children's parent or legal guardian; or

(v) Is temporarily on school grounds, during school hours, for the purpose of making a mail, food or other delivery.

(e) Changes in the ownership or use of property within one thousand feet (1,000') of the property line of an offender's primary or secondary residence or place of employment that occur after an offender establishes residence or accepts employment shall not form the basis for finding that an offender is in violation of the residence restrictions of this section.

(f) A violation of this part is a Class E felony. No person violating this part shall be eligible for suspension of sentence, diversion or probation until the minimum sentence is served in its entirety.

(g) The first violation of this part is punishable by a fine of not less than three hundred fifty dollars (\$350), and imprisonment for not less than ninety (90) days.

(h) A second violation of this part is punishable by a fine of not less than six hundred dollars (\$600), and imprisonment for not less than one hundred eighty (180) days.

(i) A third or subsequent violation of this part is punishable by a fine of not less than one thousand one hundred dollars (\$1,100), and imprisonment for not less than one (1) year.

SECTION 12. Tennessee Code Annotated, Section 40-39-212, is amended by deleting subsection (a) in its entirety and substituting instead the following and by adding a new subsection (d) as follows:

(a) Upon the court's acceptance of a defendant's entry of a plea of guilty or a finding of guilt by a jury or judge after trial, and, notwithstanding the absence of a final sentencing and entry of a judgment of conviction, any defendant who is employed or practices a vocation, establishes a primary or secondary residence, or becomes a student in this state, and who enters a plea of guilty to a qualifying offense in § 40-39-202(20) or § 40-39-202(28), shall be required to register with a registering agency.

(d) The provisions of this part shall apply to offenders who received diversion under § 40-35-313 or its equivalent in any other jurisdiction.

SECTION 13. Tennessee Code Annotated, Title 40, Chapter 39, Part 2, is amended by adding the following new sections thereto:

§ 40-39-213.

(a) Except as provided in subsection (c), immediately after a sex offender registers or updates a registration, TBI shall provide all information in the registry about the offender that is made public pursuant to § 40-39-206(e) to the following:

(1) The United States Attorney General, who shall include that information in the National Sex Offender Registry or other appropriate databases.

(2) Appropriate law enforcement agencies (including probation and parole offices), and each school and public housing agency, in each area in which the individual resides, is an employee, establishes a physical presence, or is a student.

(3) Each jurisdiction where the sex offender resides, is an employee, establishes a physical presence, or is a student, and each jurisdiction from or to which a change of residence, employment, or student status occurs.

(4) Any agency responsible for conducting employment-related background checks.

(5) Social service entities responsible for protecting minors in the child welfare system.

(6) Volunteer organizations in which contact with minors or other vulnerable individuals might occur.

(7) Any organization, company or individual who requests such notifications pursuant to procedures established by TBI.

(b) In addition to the information provided pursuant to subsection (a), TBI shall provide all information in the registry about the offender, regardless of whether the information is made public pursuant to § 40-39-206(e), to the organization described in subdivision (a)(1) and appropriate law enforcement agencies.

(c) Notwithstanding subsection (a), TBI is not required to provide information to an organization or individual described in subdivision (a)(6) or (a)(7) more frequently than once every five (5) business days and an organization in (a)(6) or (a)(7) may elect to receive notification less frequently than five (5) business days.

§ 40-39-214.

(a) While mandated to comply with the requirements of this chapter, it is an offense for a sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, whose victim was a minor, to knowingly:

(1) Pretend to be, dress as, impersonate or otherwise assume the identity of a real or fictional person or character, or a member of a profession, vocation or occupation while in the presence of a minor, or with the intent to attract or entice a minor to be in the presence of the offender;

(2) Engage in employment, a profession, occupation or vocation, regardless of whether compensation is received, that the offender knows or should know will cause the offender to be in direct and unsupervised contact with a minor; or

(3) Operate, whether authorized to do so or not, any vehicle or specific type of vehicle, including, but not limited to, an ice cream truck or emergency vehicle, for the purpose of attracting or enticing a minor to be in the presence of the offender.

(b) It is a defense to a violation of this section that the offender was the parent of the minor in the offender's presence.

(c) A violation of this section is a Class A misdemeanor.

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. Tennessee Code Annotated, Section 40-39-206(e), is amended by deleting the language "(e)(1)-(10)" wherever it occurs and substituting instead the language "(e)(1)-(13)".

SECTION 16. Tennessee Code Annotated, Section 40-39-204, is amended by adding the following to the end of subsection (f):

Further, if an offender is released or discharged from a nursing home, assisted living facility, mental health institution or is no longer continuously confined to home or a health care facility due to mental or physical disabilities, the offender shall, within forty-eight (48) hours, register in person with the designated law enforcement agency, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3). If the offender has previously registered prior to such release or discharge, the offender shall, within

forty-eight (48) hours, report in person to the designated law enforcement agency and update all information pursuant to this section.

SECTION 17. Sections 6 and 13 of this act shall take effect January 1, 2009, the public welfare requiring it. The remaining sections of this act shall take effect July 1, 2008, the public welfare requiring it.

PASSED: May 21, 2008



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY, SPEAKER
SENATE OF THE SENATE

APPROVED this 13th day of June 2008



PHIL BREDESEN, GOVERNOR